COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RANDY J. OVERSTREET COMPLAINANT VS. KENTUCKY UTILITIES COMPANY DEFENDANT	)))))))))	CASE NO. 92-428

O R D E R

On October 6, 1992, Randy J. Overstreet filed a complaint against Kentucky Utilities Company ("KU") alleging that he had been improperly billed for service by KU. The Commission, by Order of October 12, 1992, directed KU to either satisfy the matters complained of in the complaint or file a written answer within 10 days of the date of the Order. On October 22, 1992, KU filed its answer denying any impropriety in its billing of Overstreet. A hearing was held on the complaint before the Commission on January 29, 1993 at which both parties appeared but only KU was represented by counsel.

FINDINGS OF FACT

KU is a corporation that owns, controls, and operates facilities used in the generation, production, transmission, and distribution of electricity to the public for compensation. Its principal offices are located in Lexington. Overstreet is a customer of KU who resides in Lawrenceburg within KU's service area.

Customers of KU are charged for the service they receive based upon the volume of electricity they consume. The volume of electricity delivered to residential customers is measured by individual electric meters assigned to each customer. As electricity passes through the meter, the current causes a disk in the meter to revolve. The revolving disk activates gears that turn the dials which register the volume of electricity delivered to the customer. To ensure that each customer is not overcharged or undercharged, meters are tested periodically for accuracy.

On April 27, 1992, the meter assigned to Overstreet was tested by KU. The test disclosed that the Overstreet meter was recording only 81 percent of the electricity passing through it under a full load and was not recording any electricity under a light load. As a result of these findings, KU notified Overstreet on June 9, 1992 that an adjustment had been made to his bills for the three year period beginning in April 1989 and that he owed an additional $448.80 to cover the deficiency caused by the failure of the meter to register all the electricity delivered to his home.

Overstreet purchased and moved into his home in August 1986. The meter tested in April was purchased by KU in 1964 and was on the home when he moved in and remained there until it was removed for testing. Prior to the last test, the meter had been tested by KU on three separate occasions. The first test was conducted on November 12, 1964, shortly after its purchase and before being placed into service. In that test the meter was found to be operating at 100 percent accuracy under both full and light loads. The meter was again tested on June 25, 1973 and February 6, 1981. On both those occasions, the meter's accuracy exceeded 99 percent under both full and light loads. Therefore, KU was unaware of any defect in the meter until it was last tested in April. After the last test, the meter was inspected to determine why it was not operating properly. The inspection revealed that bearings upon which the disk revolved had become worn causing the disk to slow down.

The test on the Overstreet meter in April 1992 was conducted by KU in accordance with a sample testing plan approved by the Commission. Sample testing of meters is authorized by 807 KAR 5:041, Section 16. It allows electric utilities, with Commission approval, to conduct random sampling of meters rather than test all meters periodically. Utilities that have adopted sample testing plans are required to group their meters according to type and age and then select a number of meters annually from each group for testing. To pass inspection, meters are required to record consumption within two percent fast or slow and the number selected in each group is dependent upon the percentage of meters in that group that passed inspection during the preceding year. The greater the number that passed inspection in one year, the fewer the number that are required to be tested the following year. Customers whose meters record more than two percent fast or slow are given a refund or billed for the deficiency by KU, whichever is appropriate.

CONCLUSIONS OF LAW

KU is a utility whose rates and service are subject to regulation by this Commission. Pursuant to KRS 278.040 the Commission has promulgated 807 KAR 5:041 to establish general rules which apply only to electric utilities. Included among those rules is the requirement that electric utilities test their meters to ensure their accuracy. Testing may be conducted periodically on all meters, as provided in Section 15 of the regulation or, as in this case, it may be done in accordance with a sample testing plan approved by the Commission in accordance with Section 16 of the regulation. Section 16 further provides as follows:

> (5) Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last test but in no case to exceed three (3) years. This provision shall apply only when sample testing of single phase meters has been approved by the Commission and utilized by the utility.

There is no question here that the meter used to measure the consumption of electricity by Overstreet was more than two percent slow. Furthermore, there is no way to determine from the billing history how long this condition existed. Therefore, the adjustment of the Overstreet account, based upon a three year billing period, was in accordance with the regulation.

Notwithstanding the provisions of Section 16 of the regulation, Overstreet argues that a utility may not assess a customer for any deficiency which results from a defective meter. Overstreet bases his argument in what he sees as a conflict in the regulation, specifically between Sections 15 and 16.

While Section 16 requires a utility to adjust a bill when the meter is more than two percent fast or slow, Section 15 requires each electric utility to provide its customers metering equipment that is "in good order." Overstreet contends that a meter which does not measure consumption accurately violates Section 15, and a utility should not be permitted to recover lost revenue results from a violation of a regulation.

Overstreet's position, if adopted by the Commission, would result in utilities charging a different rate for electricity to customers whose meters become defective than they charge customers whose meters record consumption accurately. Such preferential treatment is prohibited by statute. Specifically, KRS 278.160(2) prohibits any utility from charging an amount different than that prescribed in its tariffs filed with this Commission and KRS 278.170 prohibits utilities from discrimination as to rates or service. Therefore, if there is a conflict between Section 15 and Section 16, the statutes mandate that it be resolved in favor of Section 16 and back billing.

Overstreet argues alternatively that if the adjustment of his bill is deemed by the Commission to be proper, the adjustment period should have been 12 months rather than three years. Overstreet concedes that the regulation under which the adjustment was made permits the adjustment to cover a three-year period, but argues that it conflicts with the provisions of 807 KAR 5:006, Section 9(3), that were in effect in 1991 when KU began the testing process. Under that regulation, the maximum period of adjustment was 12 months.[1] Overstreet contends that the provisions of 807 KAR 5:041, Section 16, which provides for the three-year period, conflicts with 807 KAR 5:006, Section 9(3), which provides for the 12-month period, and because they are both, in effect, punitive measures, the less stringent, or 12-month period, should take precedence. The major fallacy in this argument is that it is based on an erroneous assumption.

807 KAR 5:006, Section 9, states explicitly that it applies only to periodic tests or complaint tests of meters. The test performed on the Overstreet meter does not fall into either of these categories. The Overstreet meter was tested under a sample testing program authorized by 807 KAR 5:041, Section 16, a separate and distinct procedure. Therefore, the provisions of Subsection 5 establishing the adjustment period for meters tested under that procedure do not conflict with the provisions of 807 KAR 5:006, Section 9. Thus, the three-year period used by KU to adjust the Overstreet meter was proper.

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[1] 807 KAR 5:006 was amended effective January 1, 1992. Under the current regulation, the adjustment period is determined by agreement between the utility and the customer. If they are unable to agree, the adjustment period is determined by the Commission.

NOW, THEREFORE, based upon the foregoing findings of fact and conclusions of law, and upon the entire record, this Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The complaint filed by Randy J. Overstreet against Kentucky Utilities Company be and is hereby dismissed.

2. Randy J. Overstreet shall pay to Kentucky Utilities Company the deficiency determined from the test conducted on the electric meter assigned to him in the amount of $448.80. Payments shall be due in 35 monthly installments of $12.47 and one final installment of $12.45, the first payment being due on the first bill issued to Randy J. Overstreet not less than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 5th day of April, 1993.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director